**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 5810 OF 2004**

Samiullah Khan and Anr. ...Petitioners

Versus

M/s. Umang Hotels Pvt.Ltd. & Ors. ...Respondents

.....

Mr. Prafulla Shah with Mr.A.B. Avhad, counsel for Petitioners

Mr. Madhav Jamdar, counsel for Respondent No.1.

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**CORAM: B. H. MARLAPALLE, J.**

**DATED: 21ST MARCH, 2005**

**P. C.:-**

1. Heard Mr. Prafulla Shah, the learned counsel for the petitioners. The petitioner No.1 is the appellant in Civil Appeal No. 490/1998. The present respondent filed applications at Exh.41 on 6.2.2004 and Exh.42 on 10.2.2004 purportedly under Order XXXXI Rule 27 of the Code of Civil Procedure, 1908 for brining on record additional evidence for rendering final judgment in the said appeal. These applications have been allowed by the learned 14th Adhoc Additional District Judge at Pune on 7.4.2004 and hence, this petition.

2. In the first application at Exh.41 it was

contended that without raising grounds in the appeal certain additional issues were canvassed during the arguments such as sale deed of the suit property were not produced, no action was taken by Pune Municipal Corporation for demolition of the three rooms constructed and deed of registration of the respondent company and hence additional documents were required to be produced i.e. copies of notarised sale deeds, plaint in R.C.S. No. 1107 of 1999 and the certificate of incorporation bearing No. 11-82325/94. In the second application at Exh.42 the respondent applicant sought to bring on record certified copies of charge sheet, panchnama and statement recorded by the police in Criminal case No. 1385 of 1998.

3. Mr. Shah, the learned counsel appearing for the petitioners-appellants submitted that the permission granted by the lower appellate court by the impugned order is manifestly erroneous and there was no disclosure made as to when the copies of documents were available to the petitioner and whether despite of diligent steps having been taken it was not in a position to produce the same. He relied upon the decision of this Court in the case of **Sardar Dastur Schools Trust & Ors. Vs. Adil Jamshed, Frenchman & Ors. [2002 (Supp.2), Bom.C.R.496].**

4. Mr. Jamdar the learned counsel on the other hand has supported the impugned order by relying on the decision of the Supreme Court in the case of **Syed Abdul Khader Vs. Rami Reddy & Ors. [AIR 1979 SC 553].**

5. Admittedly, the civil suit No. 267 of 1997 came to be decided on 29.4.1998 and the appeal was filed on 25.6.1998. The copies of the charge-sheet, panchanama and statement recorded by the police were available to the respondents only thereafter. The criminal case No. 1385 of 1998 was filed on or about 18.6.1998 and these documents were relevant to meet the allegations regarding the raids carried out by the police on the suit premises covered by the eviction decree. Similarly, if the appellant had enlarged the scope of grounds for appeal during his oral arguments without there being any pleading in the appeal memo, the respondent plaintiff thought it fit to meet these grounds by placing on record the documents which were available in his custody. It appears that the appellant had not disclosed that he had filed Regular Civil Suit No. 1107 of 1999 against the Municipal Corporation. Thus, the permission granted by the trial Court to bring on record three copies of the sale deed, a copy of plaint in R.C.S. No.1107 of 1999 and a copy of the certificate of incorporation was by exercising the

discretion under Rule 27 (aa) of Order XXXXI and the said discretion cannot be held to be perverse or unwarranted. The discretion exercised has been in aid for deciding the appeal on merits. No interference is therefore, called for in the discretion exercised by the trial Court. However, as the plaint in R.C.S. No. 1107 of 1999 is already placed on record, the connected documents like City Survey Plan dated 12.1.1976 does not appear to be relevant.

6. Subject to the same modification, the order impugned calls for no interference and therefore, the petition is rejected summarily.

7. It is directed that the Appeal No.490 of 1998 be heard and decided on its own merits as expeditiously as possible and preferably within a period of six months from the receipt of writ from this Court.